

Respondent contends claimant has failed to carry his burden of proving accident arising out of his employment. This was an unwitnessed fall from which claimant cannot specifically say what caused him to fall or if in fact his injuries were the result of a fall. Respondent presented the testimony of a Safety and Health Administrator, JoLynn McWilliams, who investigated the incident on behalf of respondent. She testified that on

October 25, 1994 she received a security dispatch indicating that there had been a fall in the tool fabrication building. When she arrived at the scene, claimant was still lying on a break table with blood on his face. He was unable to communicate with medical personnel on the scene. She investigated the work area for possible causes of claimant's injuries. She was unable to locate any tools or parts on the floor or which looked like they had been dropped. There were tools on claimant's work bench but she observed no blood on any tools nor trail of blood leading from the work area to the table where claimant was found. She did not interview claimant, nor did she interview the employee who discovered claimant. She opined that claimant's injuries were inconsistent with a fall because most fall victims will put out their hands to catch themselves which usually lessens the blow. Respondent further argues that there is no evidence that claimant's work activity played any roll in his injury and that his employment did not expose him to any risk beyond what is normally assumed in everyday life.

The only person with actual knowledge as to how claimant was injured was the claimant himself. There were no witnesses to the accident and when he was found claimant was in no condition to communicate concerning his injuries. He does not recall how he ended up at the break room table which is located a short distance from his work station, but in his deposition testimony which was given at the hospital where he was being treated for his injuries, claimant testified to facts consistent with a work-related accident. He stated that he was walking carrying a tool when he slipped on a trail car and fell hitting his head on the tool. He recalls that he lost his balance and fell and the next memory he has was when he regained consciousness at the hospital. He speculates that maybe the tool was too heavy, but is not clear as to what caused him to lose his balance and fall. He does state that he did not black out or lose consciousness until after his head hit the tool.

Although claimant's testimony is not as clear and complete as one would perhaps desire, the Appeals Board finds that it is sufficient to meet the claimant's burden of establishing personal injury by accident arising out of and in the course of his employment. The investigation conducted by respondent's Safety and Health Administrator does not present facts sufficient to rebut the testimony of the claimant, nor is claimant's testimony shown to be so unbelievable or untrustworthy as to be disregarded. The lack of clarity in claimant's testimony can easily be explained by his head injury and, in addition, there appears to be a language problem which tends to further complicate the record. Taking the record as a whole, the Appeals Board finds that the claimant has met his burden and that the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 12, 1995 Preliminary Hearing Order of Administrative Law Judge John D. Clark should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1995.

BOARD MEMBER

TUONG K. NGUYEN

3

DOCKET NO. 196,787

BOARD MEMBER

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
 Frederick L. Haag, Wichita, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director